

Rule Making

Petroleum Storage Tank Division of
the Oklahoma Corporation
Commission

Introduction

- Brief history and Overview of Petroleum Storage Tank Division (PSTD)
 - Authority to regulate and promulgate rules
- Permanent Rule Making
- Emergency Rule Making
- State Program Approval (SPA)

Brief History and Overview of PSTD

- PSTD granted authority to regulate underground storage tanks in from EPA through state program approval process.
- Before 1998, regulatory authority split between fuel division and indemnity fund
- In 1998, legislature combined the two and merged above ground storage tanks and underground storage tanks under PSTD

Seven Substance

- 2000, the legislature divided storage tank regulation between the Department of Environmental Quality (DEQ) and the OCC.
- Result is that PSTD regulated 7 substances:
 - antifreeze; motor oil; motor fuel; Gasoline; kerosene; diesel; and aviation fuel.

Authority to Regulate

- Petroleum Storage Tank Act
 - 17 O.S. § 323.
- PSTD conducts fuel inspection
 - 52 O.S. § 324.1
 - i.e., sticker on the side of gas pump
- PSTD does not regulate alternative fuels such as C.N.G, propane, hydrogen or electric cars.

Rule Making

- Authority to Promulgate Rules:
 - Article IX, § 18
 - 17 O.S. § § 301, 306(12), 307(A), 322(4), *et cetera...*
 - Oklahoma Administrative Procedure Act:
 - 75 O.S. § 250, *et seq*,
- Two Types of Rule Making
 - Emergency Rule Making
 - Permanent Rule Making

Emergency Rule Making

- OCC or PSTD determines a need for emergency Action
- 75 O.S. § 243, Justification:
 - Public health, safety or welfare
 - Agency's governing law or federal program
 - Avoid violation of law
 - Avoid imminent reduction to agency budget
 - Avoid serious prejudice to public interest

OCC/PSTD Procedure

- OCC Opens Rulemaking Record
- OCC files Notice of Proposed Emergency Rule Making (NOPER)
- Publication in Oklahoma Register
- OCC Prepares Rule Impact Statement (RIS)
 - Pursuant to 75 O.S. § 303(D)
- OCC holds technical conference, and opens comment period
- Commissioners, *en banc*, adopt or deny rule

Procedure Continued

- Approved buy Commissioners *en banc*, then OCC Prepares the Emergency Rule Document
- 10 days after *en banc*, OCC submits the following to Governor and Legislature
 - Emergency Rule Document,
 - Rule Impact Statement (RIS),
 - Economic Impact and Environmental Impact Statement (EIS) (if applicable)

Procedure Continued

- Governor has 45 days to approve Emergency Rule
 - If approved, Governor sends Approval Letter
 - Emergency Rules are considered promulgated upon the Governor's signature
 - Final rule submitted to Office of Administrative Rules, and published in the Oklahoma Register.
- Emergency Rules are effective through September 14th of following year, or until superseded by permanent rule.

2016 PSTD Emergency Rules

- Chapters 5 and 25
- CH 5: Procedural Guidelines
 - Administrative Review for Variance
 - Justification: Avoid violation of state law
- CH 25: Comply with 40 CFR § 280 *et seq*
 - Expand underground Storage Tank Definition
 - Requirements for leak detection, including Statistical Inventory Reconciliation (SIR)

CH 25 Issues

- EPA Regional office works with the OCC to implement State Program Approval.
- Regional office reviewed proposed rules, and had no objection
- EPA office in Washington D.C. had objections regarding leak detection records on site.
 - “no later than the end of the following month” to
 - “every 30 days”
- To comply with EPA, emergency rule necessary

Permanent Rule Making

- PSTD Determines Need for Rule Making
- Rules are drafted and presented to Storage Tank Advisory Counsel
- Notice of Proposed Rulemaking (NOPR) prepared
- Commissioners vote on NOPR at public meeting
- NOPR is published, then 30 day comment period
- Rule Impact Statement (RIS) and Economic Benefit Statement (EBS) (if applicable) drafted w/ 15 days of publication

Permanent Rule Making Cont'd

- Typically two technical conferences
- Public comments due 30 days after publication
- Commission *en banc* held at least 35 days after publication of NOPR
- Agency Rule Report published in Oklahoma Register
- Legislature either adopts, rejects or fails to hear
 - Governor can accept or reject with Omnibus Joint Resolution

Permanent Rule Making Cont'd

- After adoption, Permanent Rule Document prepared w/ 30 days of adoption and filed with Office of Administrative Rules
- OCC receives notice of publication in the Oklahoma Register from Office or Admin. Rules
- Rules Promulgated 10 days after publication
 - As opposed to Governor's signature w/ emergency

PSTD Permanent Rules

- Ch. 15 – Fuel Inspection
- Ch. 16 – Antifreeze
- Ch. 25 – Underground Storage Tanks
- Ch. 26 – Above Ground Storage Tanks
- Ch. 27 – Indemnity Fund
- Ch. 29 – Corrective Action of Petroleum Storage Tank Releases
 - These rules are at the Economic Impact and Environmental Benefit phase of the proposed permanent rulemaking process.
 - Only Chs 25 and 26 have received and public comment.

State Program Approval

- Underground Storage Tank Program
- Federally regulated, state administered
- State Program must be no less stringent than Federal Program
- First SPA process since March 18, 1996
- Deadline to submit application for approval is October 13, 2018.

SPA Application Process

- 40 CFR § 281.20 any state must submit an application containing the following parts:
 - a) A transmittal letter from the Governor of the state requesting program approval;
 - b) a description in accordance with 40 CFR § 282.21 of the state program and operating procedures;
 - Unfortunately, there is no § 282.21. Staff is looking into this issue.
 - c) a demonstration of the state's procedures to ensure adequate enforcement
 - d) a memorandum of agreement outlining roles and responsibilities of EPA and the implementing agency;
 - e) An attorney general's statement in accordance with 40 CFR § 281.25 certifying to applicable state authorities; and
 - f) copies of all applicable state statutes and regulations.

Attorney General's Certification

- Written demonstration of authority to carry out the program
 - Must include citations to specific statutes, regulations, and any judicial decisions that demonstrate adequate authority to regulate and enforce UST requirements
 - Statutes and regulations must be fully effective when program is approved by Attorney General.
 - This is why we had the emergency rulemaking. The two revisions in Chapter 25, that the EPA felt were needed to more closely match the federal regulations, must be fully effective before we can submit our application to Attorney General
 - No time-frame established for AG review

Conclusion

- Brief history and overview of PSTD
- Commission Authority to Regulate
- Commission Authority to Promulgate Rules
 - Highlights of current proposed rules
- Emergency Rule Making
- SPA Authority
- And how these topics are related.

Contact Info

Zach D. Duvall

Z.duvall@occeemail.com